

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GRAHAM NIVEN and DEPARTMENT OF THE ARMY,
TRAINING & AUDIOVISUAL SUPPORT CENTER, Fort Bragg, N.C.

*Docket No. 97-269; Submitted on the Record;
Issued October 14, 1998*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation, effective July 21, 1996, on the grounds that he had no continuing disability resulting from his work-related injury.

The Board has carefully reviewed the case record and finds the medical evidence sufficient to meet the Office's burden of proof in terminating appellant's compensation.

Under the Federal Employees' Compensation Act,¹ the Office has the burden of justifying modification or termination of compensation once a claim is accepted and compensation paid.² Thus, after the Office determines that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing either that its original determination was erroneous or that the disability has ceased or is no longer related to the employment injury.³

The fact that the Office accepts appellant's claim for a specified period of disability does not shift the burden of proof to appellant to show that he or she is still disabled. The burden is on the Office to demonstrate an absence of employment-related disability in the period subsequent to the date when compensation is terminated or modified.⁴ The Office's burden

¹ 5 U.S.C § 8101 *et seq.* (1974).

² *William Kandel*, 43 ECAB 1011, 1020 (1992).

³ *Carl D. Johnson*, 46 ECAB 804, 809 (1995).

⁴ *Dawn Sweazey*, 44 ECAB 824, 832 (1993).

includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵

In assessing medical evidence, the number of physicians supporting one position or another is not controlling; the weight of such evidence is determined by its reliability, its probative value and its convincing quality. The factors that comprise the evaluation of medical evidence include the opportunity for and the thoroughness of, physical examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁶

In this case, appellant's claim, filed on April 1, 1983 after he slipped and fell at work, was accepted by the Office for a contusion, paravertebral muscle strain and herniated disc at L-5. Appellant received appropriate compensation.⁷

On April 25, 1996⁸ the Office issued a notice of proposed termination based on the medical opinion of Dr. Richard L. Young, a Board-certified orthopedic surgeon, that appellant had no definite orthopedic pathology to support his complaints of back pain. The Office informed appellant that he had 30 days to submit additional evidence or argument to show that the disability from his work injury had not ceased.

Appellant's attorney corresponded with the Office seeking an appeal but then withdrew his representation. On July 24, 1996 the Office terminated appellant's compensation, effective July 21, 1996, on the grounds that his work-related disability had ceased. The Office noted that appellant had not responded to the notice of proposed termination.

The Board finds that Dr. Young's reports are sufficient to meet the Office's burden of proof in terminating appellant's compensation. Dr. Young recorded a complete medical and work history, reviewed the records provided by the Office, including a September 29, 1983 computerized tomography scan and examined appellant, finding a "guarded" range of motion and "a very exaggerated protective manner" exhibited by appellant when asked to sit up.

In a report dated November 4, 1994, Dr. Young stated that appellant had chronic low back pain of uncertain etiology. He found no evidence of sciatica or radicular injury and noted appellant's ability to ambulate without discomfort, negative straight leg raising, intact neurological responses and ability to heel and toe walk. Dr. Young concluded that appellant's complaints of pain, whether real or not, caused him residual disability.

⁵ *Mary Lou Barragy*, 46 ECAB 781, 787 (1995).

⁶ *Connie Johns*, 44 ECAB 560, 570 (1993).

⁷ Appellant, a photographer, stopped work on April 1, 1983, returned to light duty from July 26 through August 22, 1983 and then did not return to work. He was terminated by the employing establishment on November 3, 1984.

⁸ In the interim, the Office had suspended appellant's compensation because he refused to undergo a medical examination. Appellant appealed to the Board, which issued a decision (Docket No. 92-1325) on July 13, 1993 reversing the suspension due to procedural error.

In his December 16, 1994 report, Dr. Young clarified his conclusion regarding causal relationship by explaining that appellant firmly “believe[d]” that his work injury was still causing his back pain and so in that sense appellant’s disabling pain was causally related to the initial injury. Dr. Young recommended that appellant be referred to a psychiatrist “to try to sort how much” of appellant’s pain is nonfunctional. The physician added that appellant had “no definite orthopedic pathology to hang a diagnosis on.” Thus, Dr. Young found no orthopedic basis for appellant’s complaints of pain. He attributed the cause of such pain to appellant’s psychological problems.

The Board finds that the weight of the medical evidence rests with the opinion of Dr. Young and is sufficient to meet the Office’s burden of proof in terminating appellant’s compensation.⁹

The July 24, 1996 decision of the Office of Workers’ Compensation Programs is affirmed.

Dated, Washington, D.C.

October 14, 1998

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

⁹ See *Samuel Theriault*, 45 ECAB 586, 590 (1994) (finding that a physician’s opinion was thorough, well rationalized, and based on an accurate factual background and thus constituted the weight of the medical evidence that appellant’s accepted injury had resolved).